

D.T.E. 03-42

Petition by the Massachusetts Bay Transportation Authority to commence a rulemaking pursuant to 220 C.M.R. § 2.00 et seq., to amend 220 C.M.R. § 151.00 et seq.: Rail Fixed Guideway System: Safety System Program Standard.

ORDER INSTITUTING RULEMAKING

I. INTRODUCTION

By this Order, the Department of Telecommunications and Energy (“Department”) opens a rulemaking, pursuant to a petition by the Massachusetts Bay Transportation Authority (“MBTA”), for the purpose of amending regulations 220 C.M.R. § 151.00 et seq. The revised regulation would increase MBTA track inspection and maintenance standards set forth in 220 C.M.R. § 151.08: Rail Fixed Guideway System: Track Inspection and 220 C.M.R. § 151.09: Rail Fixed Guideway Systems: Track Maintenance. Pursuant to the MBTA’s enabling legislation, G.L. c. 161A, § 3(i), the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-40, 49 U.S.C. § 5330, and 49 C.F.R. Part 659, the Department is the state safety oversight agency for intrastate rail fixed guideway systems. The Commonwealth of Massachusetts has one rail fixed guideway system which is operated by the MBTA. As evident through a recent Corrective Action Plan (“CAP”)¹ involving the MBTA Green Line rapid transit system, the proposed regulation is necessary for the public safety and general welfare. This regulation is enacted pursuant to G.L. c. 161A, § 3(i), the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-40, 49 U.S.C. § 5330, and 49 C.F.R. Part 659 and in accordance with the procedures set forth in G.L. c. 30A, § 2 and 220 C.M.R. § 2.00 et seq.

In connection with this proceeding, the Department finds that increased inspection and maintenance standards are vital to the safe and efficient operation of the MBTA’s rapid transit

¹ A Corrective Action Plan is a plan submitted to the Department by the MBTA to minimize, control, warn or eliminate and investigated hazardous condition within a specified time. See 220 C.M.R. § 151.02

system and the proposed regulation is necessary for the public health, safety and general welfare. The Department now seeks comment on proposed adoption of the regulation increasing the inspection and maintenance standards for the MBTA's rapid transit track infrastructure.

II. PROPOSED REGULATIONS

By this Order, the Department proposes a regulation increasing the standards for MBTA rapid transit track inspections and maintenance. The Department continuously reviews and implements policies and procedures designed to ensure the safe and efficient operation of the MBTA pursuant to the general supervisory authority delegated to it by the General Court and United States Congress. See e.g., G.L. c. 161A, § 3(i); the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-40; 49 U.S.C. § 5330, and 49 C.F.R. Part 659. Further, under its safety mandates, the Department is charged with the investigation of accidents involving the MBTA and ensuring that corrective actions are implemented to prevent such incidents from reoccurring. See 220 C.M.R. § 151.06; 220 C.M.R. § 151.07.

Acting in its safety oversight capacity, the Department, on August 21, 2001, in response to a number of derailments in 2000 and 2001, suspended the operation of the recently introduced AnsaldoBreda ("AB") No. 8 Low Floor Light Rail Vehicle ("No. 8 car") on the Green Line, finding that the vehicle represented a "hazardous condition" to the public pursuant to 220 C.M.R. § 151.06 and 220 C.M.R. § 151.07. After the Department's finding, an extensive 18 month investigation by the MBTA and several outside consultants revealed that flaws with the No. 8 car's wheel-to-rail interface and track system deficiencies were the root

causes of the derailments. As part of its CAP to reintroduce the No. 8 Cars into revenue service on the B-Line (Government Center to Boston College), the MBTA proposed, and the Department approved, increased inspection and maintenance standards for the MBTA's rapid transit infrastructure. The new standards increase the frequency by which rapid transit track is inspected and increase minimum track defect thresholds that are used to determine whether remedial action and/or restrictions on vehicle operation are required. In its March 14, 2003 decision on the MBTA CAP for the No. 8 cars, the Department encouraged the MBTA to review its overall track inspection and maintenance regulations and, to the extent that the regulations' standards were inconsistent with those imposed by the CAP, petition the Department to amend the regulation. Heeding the Department's invitation, the MBTA, on April 2, 2003, petitioned the Department to amend the MBTA inspection and maintenance regulations to make them consistent with the standards imposed by the CAP.

The need to ensure public safety necessitates adopting the regulation pursuant to the Administrative Procedure Act. G.L. c. 30A, § 2. Accordingly, the Department proposes amending regulation 220 C.M.R. § 151.00 et seq., specifically the provisions of 220 C.M.R. § 151.08: Rail Fixed Guideway System: Track Inspection and 220 C.M.R. § 151.09: Rail Fixed Guideway Systems: Track Maintenance. A copy of the current regulation incorporating the proposed revisions is attached. The effective date of the revised regulation shall be the date of final publication in the Massachusetts Register. Before the amended regulation can become permanent, however, further action will be required, including an opportunity for public comment. Id. The Department will provide that opportunity at a public hearing.

III. SOLICITATION OF COMMENTS

The Department seeks initial written comments on these proposed revisions to 220 C.M.R. § 151.00 et seq. no later than 5:00 p.m. on October 29, 2003, and reply comments no later than 5:00 p.m. on November 12, 2003. Written comments will be limited in length to a maximum of 20 one-sided, double-spaced typewritten pages. Comments should be filed with Mary L.Cottrell, Secretary, Department of Telecommunications and Energy, One South Station, 2nd Floor, Boston, Massachusetts 02110. All written pleadings or comments must also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dte.efiling@state.ma.us, cc: Hearing Officer at michael.killion@state.ma.us; or (2) on a 3.5" floppy diskette, IBM-compatible format. The text of the e-mail or the diskette label must specify: (1) an easily identifiable case caption; (2) docket number; (3) name of the person or company submitting the filing; and (4) a brief descriptive title of document (e.g., comments). The electronic filing should also include the name, title and phone number of a person to contact in the event of questions about the filing. Text responses should be written in either Word Perfect (naming the document with a ".wpd" suffix) or in Microsoft Word (naming the document with a ".doc" suffix). Data or spreadsheet responses should be compatible with Microsoft Excel. Documents submitted in electronic format will be posted on the Department's Website (<http://www.mass.gov/dpu>).

To provide further opportunity for comment, and pursuant to G.L. c. 30A, §§ 2 and 4, and 220 C.M.R. § 2.05, the Department will hold a public hearing on November 5, 2003 at

10:00 a.m., at the Department's offices, One South Station, Boston, Massachusetts. Interested persons may present facts, opinions, or arguments relating to the proposed regulations at the public hearing.

By Order of the Department,

Paul G. Afonso, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner